

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 17252 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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MUKUNDLAL TRIKAMLAL PATWA - Petitioner(s)

Versus

STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :

MS KJ BRAHMBHATT for Petitioner(s) : 1, MS VARSHA BRAHMBHATT for
Petitioner(s) : 1,

MR SATYAM CHHAYA, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 4.

MR PRANAV G DESAI for Respondent(s) : 3,
NOTICE SERVED for Respondent(s) : 5,
NOTICE NOT RECD BACK for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 09/01/2007

ORAL JUDGMENT

1. Rule. Mr.Chhaya, learned AGP waives service of

notice of rule for Respondents No.1,2,4,5 and 6 and Mr.P.G.Desai, learned Counsel waives service of notice of rule for Respondent No.3. With the consent of the learned Counsel for the parties, the matter is finally heard today.

2.The petitioner has approached this Court for challenging the action of the respondent authorities in the Scheme under Gujarat Town Planning and Urban Development Act (hereinafter referred to as "the Act") so far it relates to land bearing F.P. No.342/Part-4 (City Survey No.257), admeasuring 126 sq. mtrs.

3.Heard the learned Counsel appearing for the parties.

4.Upon hearing the learned Counsel for both the sides, it appears that it is not in dispute that the land, which was originally held by one Sakina Abbas Karimi and Others was allotted to them by the Government in the year 1992 at the rate of Rs.200/- per sq. mtrs and the payment was made thereafter. As per the petitioner, the possession was also handed over in the year 1992. It appears that the petitioner purchased

the said land by registered sale deed in the year 1994 and as per the petitioner, since then petitioner is in possession of the property. In furtherance to the said aspects, as per the petitioner, the proceedings under the Stamps Act were initiated and the petitioner had paid additional duty for transaction for purchase of the land in question in his favour.

5. It is not in dispute that initially the land in question was declared as surplus land under the Urban Land (Ceiling and Regulation) Act (hereinafter referred to as "ULC Act") and thereafter, the very land was allotted to the original holder of the land namely; Sakina Abbas Karimi and Others. However, before the T.P. Officer, the representation was made by the Corporation that the land in question is a surplus land declared by the Government and, therefore, in the Scheme, the said land be allotted to the Corporation. The T.P. Officer has proceeded on the basis that the land is declared as surplus land and is held by the Government and in the Scheme, the T.P. Officer

has allotted the land in question to the Corporation for residential housing.

6. It is the grievance of the petitioner that no notice was served qua that particular land to the petitioner and in the meantime, on 24.9.2000 initial proposal was sanctioned by the Government and thereafter on 24.6.2005, the final sanction has been granted by the Government and it is under these circumstances, the petitioner has approached this Court.

7. It appears from the record that the whole premise of consideration by the T.P. Officer qua the land in question is on the basis that the land is declared as surplus land under the ULC Act and is held by the Government. The T.P. Officer has not at all considered the matter on the basis that the land is held by Sakina Abbas Karimi or the successor in title since the land was already allotted by the Government to the said Sakina Abbas Karimi and others after it was declared as surplus land under ULC Act. It is not a matter where the allotment by the Government of a ULC Land to Sakina Abbas Karimi

and Others is disputed. Further, the transaction of purchase of the land by the petitioner from Sakina Abbas Karimi and Others is by registered sale deed in the year 1994. Therefore, it does appear that the error is committed by the T.P. Officer while preparing the Scheme qua the ownership of the land in question as if of the Government, though the land was already allotted to Sakina Abbas Karimi and in turn, held by the petitioner pursuant to the registered sale deed.

8. As per the provisions of Section 70 of the Act, even if the Scheme is finalized, there is power with the authority to consider the matter for variation of the Scheme, if the scheme is defective on account of an error, irregularity or informality. Such power can be exercised upon the application of the appropriate authority or the State Government itself can also consider the matter for variation, unless such variation is not substantial. It appears that when the exercise is under taken by the T.P. Officer while preparing the scheme on the

basis that the land is declared as surplus land under the ULC Act and held by the Government, whereas in reality on the date when the Scheme was prepared the land was already allotted by the Government to the original holder of the land namely; Sakina Abbas Karimi and others and thereafter transferred to the petitioner, it would be ex facie, error in the preparation of the Scheme and its finalization thereof by the T.P. Officer. Such error has continued to remain even when the sanction came to be granted by the State Government to such scheme qua the land in question. Therefore, it will be required for the competent authority to consider the matter for variation in the Scheme on the premise that the land was already allotted to Sakina Abbas Karimi and thereafter, was purchased by the petitioners and it was not having the status of a land as surplus land held by the Government under the ULC Act.

9. It appears that when there is an inbuilt mechanism under the Act for considering the question of variation in the preliminary or

final scheme, on account of an error or irregularity, this Court may not be required to exercise the power of striking down or setting aside the Scheme to that extent and it would be appropriate to direct the State Government to consider the question of variation on account of the error committed by the T.P. Officer while preparing the Scheme. It may be that after considering the error, the State Government may, upon the opinion of the respondent authorities, including the T.P. Officer and the affected persons, finalize the aspects for allotment of the land or for allotment of the other plot or for the compensation, as the case may be and all such questions may have to be examined by the State Government, after taking into consideration the facts and circumstances as may reveal with a view to achieve the object of the Act. But when the error is committed on the aspect of the ownership of the land in question, which is included in the Scheme and such ownership is not in dispute, the matter does require the consideration for variation by the

State Government. As the question of variation is yet to be finalized and at no point of time, such aspect is considered by the State Government, I find that it would be just and proper to direct the State Government to consider the matter for variation and to finalize the issue of correcting the error as permissible in law.

10. Under the above circumstances, I find that the following directions shall meet with the ends of justice:

(a) The State Government shall consider the question of correcting the error by way of variation in the T.P. Scheme No.23 of Tadalja, District Vadodara so far as it relates to the land admeasuring 126 sq. mtrs., bearing F.P. No.342/Part-4 (City Survey No.257). The State Government shall finalize the issue of variation after giving opportunity of hearing to the petitioner as well as to the Corporation or any other parties affected thereby and such exercise

shall be completed within a period of six months from the date of receipt of the order of this Court.

(b) Until the aspect of variation is finalized by the State Government in accordance with law, the status qua the present possession of the land in question shall be maintained by both the sides.

11. The petition is partly allowed in terms of the aforesaid directions. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

9.1.2007

(Jayant Patel, J.)

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